

#### Members

Sen. Brent Steele, Chairperson  
Sen. Richard Bray  
Sen. Lindel Hume  
Sen. James Arnold  
Rep. Linda Lawson  
Rep. Sheila Klinker  
Rep. Ralph Foley  
Rep. Bruce Borders  
Ed G. Buss  
Steve Johnson  
Hon. Randall T. Shepard  
Larry Landis  
Neil Moore  
R. Todd McCormack  
Sheila Hudson  
Hon. Frances Gull  
Hon. James Humphrey  
Hon. Roger Duvall  
Hon. Lynn Murray  
Dr. Stephen Ross



## SENTENCING POLICY STUDY COMMITTEE

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Committee

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### MEETING MINUTES<sup>1</sup>

Meeting Date: October 15, 2009  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington St.,  
Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 3

**Members Present:** Sen. Brent Steele, Chairperson; Sen. Lindel Hume; Sen. James Arnold; Rep. Sheila Klinker; Rep. Ralph Foley; Rep. Bruce Borders; Ed G. Buss; Steve Johnson; Hon. Randall T. Shepard; Larry Landis; Neil Moore; R. Todd McCormack; Sheila Hudson; Hon. Frances Gull; Hon. James Humphrey; Hon. Roger Duvall; Hon. Lynn Murray; Dr. Stephen Ross.

**Members Absent:** Sen. Richard Bray; Rep. Linda Lawson.

Sen. Steele called the meeting to order at 1:37pm. Sen. Steele recognized that Rep. Austin was joining the committee via video conference.

**Rep. Austin** told committee members that the issue of the state paying the cost of crimes committed in correctional facilities was brought to her by Judge Dennis Carroll of the Madison Superior Court #1. Madison County has three correctional facilities. During the 2009 session, the General Assembly passed SB 223 that made trafficking of cell phones to Department of Correction (DOC) inmates a Class C felony. This legislation in future years is likely to generate

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be obtained electronically by requesting copies at [licrequests@iga.in.gov](mailto:licrequests@iga.in.gov). Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

more felony prosecutions in Madison County and other counties where correctional facilities are located.

She told the members that while the state General Fund pays for two prosecutors in Madison County, the state General Fund does not cover the additional costs of public defenders and jury trials. And while the state General Fund pays all criminal defense costs for crimes committed by offenders in DOC facilities, it does not for the criminal defense costs when visitors to the facilities commit crimes. This is particularly a problem in trafficking cases. Rep. Austin asserts that the state General Fund should pay these criminal defense costs and suggested that this issue should be examined either during this upcoming session or, more likely, in the next budget session.

**Judge Dennis Carroll of Madison Superior Court** distributed prepared remarks regarding the issue of the prosecution of crimes committed at DOC facilities (Attachment A).

After Judge Carroll's presentation, Sen. Steele asked how many criminal cases from the DOC are disposed by a jury trial and how many of the cases are appealed. Judge Carroll said that a large number of the cases are appealed but did not know the number of jury trials. Sen. Steele did not see a large burden on the court system.

Mr. Buss stated that the DOC generally assembles extensive background on these criminal cases before they are given to prosecutors, making them very efficient to prosecute. He noted that the crimes are frequently caught on tape generating a lot of confessions. Judge Carroll agreed that the DOC does a good job putting these cases together, but he noted that these cases often go to trial if the prosecuting attorney and the defendants cannot agree on a plea bargain. Mr. Buss followed up by noting that the facilities in Madison County have a budget of \$50 million, most of which goes to wages paid to prison employees. He suggested that this should give Madison County a sufficient tax base to fund local government activity since most of that budget goes to wages paid to the people who work in the prison facility.

Judge Barnes stated that Madison County has proportionately more trafficking cases than other counties because of the correctional facilities. He noted that one of the reasons that more of the cases go to trial is that defendants in these cases are not motivated to plea bargain and are more willing to take their chances on trial.

Rep. Foley stated that, while he has sympathy for the counties that have extra cases due to the DOC facilities in their communities, he noted two economic benefits of the presence of the correctional facilities in Madison County. First, the prosecutors that the state General Fund provides are not limited to prosecuting cases that occur on DOC property. Second, these facilities employ a significant number of people who live in the local community. Judge Carroll agreed but wished the committee members to consider the additional burden caused by these new trafficking cases.

**Robert Bugher, Chief Council, Department of Correction**, testified that the state pays for two additional deputy prosecutors in Madison County. The state also pays for criminal defense expenses through the Escapee Counsel and Trial Expense Account. Mr. Bugher told the committee that this account is funded at roughly \$200,000 a year, and in some years DOC has had to spend significantly more money for criminal defense by transfers from other DOC accounts.

**Andrew Cohen, Public Defender Council**, testified that while state law allows counties with DOC facilities with offender populations exceeding 100 offenders to appoint between one and three deputy prosecuting attorneys depending on the offender population in the county, no

additional funds are made available for more public defenders. Mr. Cohen understands that paying for public defenders is difficult due to fiscal restraints, but he noted the disparity.

Responding to a question from Rep. Borders, Mr. Buss noted that Sullivan County has two prosecutors that they would not otherwise have because of the DOC facility. There was no fiscal impact study done last session on the amount that it would cost for DOC to pay for public defenders or for the trial expenses for offenses committed in DOC facilities by visitors to the facilities.

Mr. Buss noted that DOC is taking steps to reduce the amount of trafficking offenses that take place in DOC facilities. He said that DOC will no longer have "contact visits" in the Pendleton facility. Instead, inmates will take part in video visits. This will reduce the number of trafficking cases.

Sen. Steele adjourned the meeting at 2:26 pm.

## Attachment A:

## SENTENCING POLICY STUDY COMMITTEE October 15, 2009

Issue: The impact of IDOC "Trafficking" Cases on Counties with IDOC Facilities

- 1) IC 35-44-3-9 makes it a criminal offense for a visitor to a penal facility to bring contraband such as cigarettes, drugs, weapons, or cell phones, into the facility. ("Trafficking" offenses)
- 2) Other crimes also occur at penal facilities. These other crimes are typically committed by prisoners. The crimes include Battery, Intimidation, Possession of a Dangerous Device, Robbery, and Drug Possession.
- 3) When it appears that a prisoner has committed a serious crime, the matter is referred to the prosecutor in the County where the penal facility is located, without any regard to the community from which the prisoner was sentenced.
- 4) Because crimes committed by inmates at major penal facilities in communities like Madison County (Pendleton has three major IDOC facilities) create a substantial burden on the local prosecutor and legal system, the IDOC budget funds a prosecutor (or 2 prosecutors in the case of Madison County) in the counties where IDOC facilities are located. This means that the expense of investigation and prosecution is spread among the citizens of the State rather than being borne by the citizens of the local county where the penal facility is located.
- 5) Likewise, IC 33-39-6-2 provides a mechanism by which judicial costs including public defender fees and court costs are paid by the State (IDOC) when a prisoner is charged with a serious offense.
- 6) But, "Trafficking" offenses are NOT committed by IDOC inmates. They are committed by visitors. And, in recent years the number of referrals to local prosecutors by the IDOC for trafficking offenses has greatly expanded. Indeed, IDOC now reports that trafficking cases are "by far" (Randy Koester email of 9/29/09) the largest referrals to local prosecutors.
- 7) Madison County has had a dramatic increase in the number of local prosecutions for trafficking at IDOC facilities: In the 4 year period 2002 to 2005, 47 trafficking cases from the IDOC were filed in Madison County courts. In the 4 year period 2006 to 2009 (with 4<sup>th</sup> quarter estimate) the Madison County prosecutor will have filed 110 trafficking cases. Trafficking cases have more than doubled in the last four years.
- 8) Presumably, the prosecutors paid by the State (IDOC) are able to handle both the crimes committed by inmates and by visitors. But, there is no statutory authority for the IDOC to pay court costs or public defender fees to a local community when the offense at an IDOC facility is committed by a visitor (viz. Trafficking).
- 9) According to the State Public Defender Commission, a part-time public defender can handle 60 class "C" felonies per year. Madison County (in accordance with State guidelines) pays its part-time public defenders \$40,000 per year, plus benefits including health insurance.
- 10) Arguably, the citizens of Madison County pay for almost 2 public defenders out of local tax revenues just to handle IDOC trafficking cases. In addition, Madison County absorbs the costs of trials, juries, transcripts, and appeals.